



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 10, 2003

Ms. Meredith Ladd
Brown & Hoffmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2003-4762

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 184022.

The Town of Flower Mound Police Department (the "Department"), which you represent, received a request for a copy of offense report number 02-003979. You assert the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we note that the submitted information includes court documents. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, as prescribed by section 552.022 of the Government Code, the Department must release the public court records to the requestor, unless they are confidential under other law. Section 552.108, a discretionary exception under the Act, does not constitute "other law" that makes information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the Department may not withhold the documents on file with a court under section 552.108 of the Government Code. However, we will address your arguments with respect to this information under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses confidentiality provisions such as section 261.201 of the Family Code. Section 261.201 reads, in part, as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). After reviewing the submitted information, we find that it does not constitute information “used or developed in an investigation” of alleged abuse or neglect as defined in chapter 261 of the Family Code. *See* Fam. Code § 261.201(a)(2). Therefore, we conclude that you may not withhold any of the submitted information under section 552.101 in conjunction with section 261.201 of the Family Code. As we reach this conclusion, the Department must release the public court records as required by section 552.022(a)(17).

Next, with respect to the remaining submitted information, we address your claims under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from required public disclosure “[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). Section 552.108(b)(2) of the Government Code excepts from public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution,” but only where “an investigation . . . did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(b)(2). The information remaining at issue that the Department seeks to withhold properly falls under section 552.108(a)(2) rather than section 552.108(b)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us that the Department closed the investigation and will take no further action on the case. Therefore, we conclude section 552.108(a)(2) applies to

the information at issue because it relates to a criminal investigation that did not result in conviction or deferred adjudication.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), which includes a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of the basic front page offense information, the Department may withhold the information relating to report number 02-003979 from disclosure based on section 552.108 of the Government Code. The Department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the Department must release the public court records under section 552.022(a)(17) of the Government Code. With the exception of basic information, the Department may withhold the remainder of the submitted information under section 552.108(a)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 184022

Enc: Submitted documents

c: Ms. Kelly Favilla
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Lewisville, Texas 75067
(w/o enclosures)